United Nations

E/2001/64

Economic and Social Council

Distr.: General
18 May 2001

Original: English

Substantive session of 2001
Geneva, 2-27 July 2001
Item 14 (g) of the provisional agenda*
Social and human rights questions: human rights

Report of the United Nations High Commissioner for Human Rights to the Economic and Social Council

Contents

		Paragraphs	Page
I.	Introduction	1–4	2
II.	Fifty-seventh session of the Commission on Human Rights	5–10	2
III.	The rights of indigenous peoples	11–25	3
IV.	The rights of persons living with HIV/AIDS	26–47	6
V.	The rights of persons with disabilities	48–66	11
VI.	The rights of persons living in least developed countries	67–72	14

* E/2001/100.

01-39741 (E) 110701

I. Introduction

1. The present report is submitted pursuant to General Assembly resolution 48/141 of 20 December 1993. It will focus on the rights of some vulnerable groups in light of a number of United Nations events, particularly the United Nations Conference on Least Developed Countries (UNLDC III) that is taking place from 14 to 20 May 2001, the special session of the General Assembly on HIV/AIDS which will take place from 25 to 27 June 2001, and the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance which will take place from 31 August to 7 September 2001 in Durban, South Africa.

2. On 18 December 2000, the General Assembly adopted the United Nations Millennium Declaration as a guiding framework for Member States and the United Nations at the dawn of the new century. The Assembly, in its resolution 55/162, called upon the entire United Nations system to assist Member States in the implementation of this Declaration. It further resolved to use existing structures and mechanisms, particularly the upcoming events and special sessions of the General Assembly, as well as the related conferences and events, as opportunities to maximize the implementation of the Declaration. My Office is committed to the implementation and the process of follow-up of the commitments made in the Declaration.

3. The Millennium Declaration provides a vision and a shared agenda for action. It commits Member States to the struggle against poverty, ignorance, disease, injustice, degradation and violence. It reaffirms fundamental values such as everyone's right to freedom and dignity, the equal rights and opportunities of women and men, and tolerance as a quality that enables differences within and between societies to be neither feared nor repressed, but cherished as precious assets of humanity. Through the Declaration, States have made commitments to promote and protect human rights, democracy and good governance and to meet the special needs of Africa, particularly to prevent conflict and to tackle the spread of HIV/AIDS.

4. Minorities, indigenous people, migrants, persons with disabilities and persons living with HIV/AIDS are particularly vulnerable to exclusion, restriction, segregation, discrimination and violence. This report addresses issues related to the rights of some of these vulnerable groups. It will start with an overview of the results of the fifty-seventh session of the Commission on Human Rights, particularly in the context of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, and focuses on recent action to advance the rights of three particularly vulnerable groups: indigenous peoples, persons living with HIV/AIDS, and persons with disabilities. The report addresses the situation in the least developed countries (LDCs) as a group of particularly vulnerable countries.

II. Fifty-seventh session of the Commission on Human Rights

5. I dedicated my report to the fifty-seventh session of the Commission on Human Rights (E/CN.4/2001/16) to the struggle against racial discrimination, in light of the forthcoming Durban Conference. Racism and racial discrimination are ongoing scourges that are at the root of many conflicts. They manifest themselves in new as well as old ways in today's world. It is appropriate that one of the first world conferences in the new century would be devoted to the elimination of racism and intolerance, in all their forms.

6. My report stressed that the prime responsibility to eliminate racial discrimination in all its forms rests with States. The International Convention on the Elimination of All Forms of Racial Discrimination provides an important framework for States' action in this area. I have written to the 25 States Members of the United Nations which have not yet ratified this landmark treaty, urging them to ratify it before the World Conference. I also urged many more States to join the 33 who have made declarations under article 14 of the Convention. To give meaning to the Convention, however, it is essential that States enact implementing legislation. These are major targets that should be achieved soon.

7. My report focused on contemporary trends in racism, particularly with regard to the movement of people, the movement of information and the movement of capital. It highlighted the adverse impact of racism on migrants, trafficked persons and displaced persons. It also considered the gender dimension of racial discrimination, and youth and racism. The report identified a number of measures that States should take in the months leading up to the Durban Conference. I

called upon each State to look afresh at itself and to reflect on the past, the present and the future. I urged each State to review its laws and policies with a view to repealing those that disproportionately affect disadvantaged racial groups and to ensuring that remedies and complaint mechanisms are available. I stressed that States must go beyond ensuring equality of individual opportunity by merely making discrimination illegal. Rather, each State must adopt special measures in an effort to reverse historical injustices that have consigned certain groups to positions of disadvantage. The report also emphasized that it is equally important that each State should establish relevant institutions and develop education and training programmes to foster tolerance and appreciation of diversity as part of their efforts to eliminate racism.

8. The special debate of the Commission, which took place on 26 March 2001, focused on tolerance and respect. The six distinguished speakers included Archbishop Desmond Tutu, Nobel Peace Prize laureate and former Chair of the Truth and Reconciliation Commission of South Africa. A number of key messages emerged during the debate. One prominent theme was that tolerance and diversity are essential to social and economic vitality as well as to the achievement of human potential. As the world becomes increasingly globalized, the need to promote common ethics and values based on respect for human dignity and worth is ever more important. It was emphasized that tolerance and respect are values common to virtually all religions in the world and that religious teachings have been a powerful force for recognizing the importance of human dignity. In this respect, it was stressed that a policy of inclusion rather than exclusion would lead to building healthy societies in which all segments would participate through democratic structures and respect for human rights. The issue of reconciliation was also prominent in the discussion. Recognition and acknowledgement of the truth, including the extent of individual and systematic discrimination, is essential to reconciliation. Special attention was given to the exploitation of and discrimination against indigenous peoples, minorities and migrant workers. Gender discrimination, and the fact that it is often compounded by other forms of intolerance based on race, religion and ethnic origin, was a major concern. The role of education as an effective yet under-utilized tool for combating fear of human differences and changing intolerant attitudes and behaviours was particularly emphasized.

9. In addition to the special debate, my Office organized a number of important parallel activities which took place during the fifty-seventh session. These included a panel on racism, children and the role of education; a meeting of the Steering Committee for the ratification of the International Convention on the Rights of All Migrant Workers and Members of Their Families; an inter-agency meeting on internally displaced persons; a meeting on human rights and disability with the participation of national institutions; and a round-table discussion to commemorate the International Day for the Elimination of Racial Discrimination.

10. The fifty-seventh session of the Commission resulted in the adoption of 82 resolutions, 19 decisions and 3 statements by the Chair. A constructive resolution on racism was adopted without a vote. The Commission also created a new mechanism to protect the human rights of indigenous peoples — an appropriate step in the context of the International Decade of the World's Indigenous People and the preparations for the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance. It also adopted a timely resolution concerning access to medication in the context of pandemics such as HIV/AIDS. The Commission also requested the appointment of an independent expert to examine the question of a draft optional protocol to the International Covenant on Economic, Social and Cultural Rights. It established an intergovernmental working group to draft a legally binding instrument for the protection of all persons from enforced disappearance and the mandate for an independent expert to review existing norms on this issue and to report to the working group. Some of these resolutions are coming before the Council for endorsement and I call on the Council to approve them.

III. The rights of indigenous peoples

11. Despite the efforts made by the United Nations and Governments in recent years, the situation of many of the world's more than 300 million indigenous people remains of serious concern. Indigenous peoples experience exclusion and marginalization in many of the countries in which they live. They are often poorly served by education, health, housing and other

services. The World Health Organization, for example, has noted significant inequities in the health status of indigenous peoples. It has observed that indigenous peoples' life expectancy at birth may be 10-20 years less than for the overall population and that infant mortality rates can be up to three times greater than the national average. In countries where information on indigenous peoples is disaggregated, similar inequities are recorded in family income, employment opportunities, and access to education and training.

12. Indigenous peoples are also disproportionately affected by national development activities which displace them from their traditional lands and territories, often with negligible or no compensation, making them victims of development rather than its beneficiaries. It is also important to underline, especially in light of the Durban Conference, that indigenous peoples are particularly vulnerable to racism and discrimination, face higher rates of incarceration than other sectors of the population, and are victims of violence against them because of their ethnicity.

13. Indigenous peoples have been active participants in the preparatory processes leading to the World Conference. The regional meetings have made a number of proposals on indigenous peoples for inclusion in the final document. As one of the groups particularly affected by discrimination, indigenous peoples' concerns need to be one of the focuses of the declaration and programme of action. Their presence in Durban is to be encouraged, in particular as the discussions and outcomes should shape policy in the years to come. As a contribution to coverage of the Durban Conference for indigenous peoples and to ensure that their communities will be informed about the event, my Office has approved funding for a number of indigenous media representatives to attend the Conference and file stories for their indigenous radio and television channels and newspapers.

14. The International Decade of the World's Indigenous People (1995-2004) has created a framework for action for the international community to contribute to improvements in the situations and living conditions of indigenous peoples. The goal of the International Decade is to strengthen international cooperation for the solution of problems faced by indigenous people in such areas as human rights, the environment, development, education and health. In my capacity as coordinator of the Decade, I have encouraged the United Nations departments, funds, programmes and agencies responsible for development-related and operational activities to strengthen their programmes for indigenous peoples. It may be noted that all of the major United Nations organizations have programmes and projects directed at indigenous communities as well as focal points that indigenous peoples can contact.

15. The success of these activities will depend to a great extent on how indigenous peoples themselves are integrated into the planning, implementation and evaluation of programmes and projects affecting them. The Decade's theme is "Indigenous people: partnership in action", and this implies looking at how new institutional mechanisms can be established to give indigenous peoples an opportunity to make their contribution to their own development. Two recent initiatives in this respect may be noted. The Conference of the Parties to the Convention on Biological Diversity has established the Ad Hoc Open-ended Inter-sessional Working Group on Article 8 (j) and Related Provisions of the Convention on Biological Diversity, which held its first meeting in March 2000 and whose programme of work for the implementation of article 8 (j) was approved by the Conference of the Parties in Nairobi in May 2000. Indigenous experts are able to take part in the deliberations and make proposals for the implementation of the Convention's provisions. The World Intellectual Property Organization has established an Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore which held its first session in Geneva in April 2001. As many traditional knowledge holders identify themselves as indigenous people, their contribution will be indispensable for the eventual success of this new intergovernmental committee.

16. The Permanent Forum on Indigenous Issues established by Economic and Social Council resolution 2000/22 of 28 July 2000 provides a significant opportunity to contribute further to the coordination of the diverse activities now being undertaken by various United Nations organizations and agencies in relation to indigenous peoples. The Permanent Forum has a number of features that are pioneering within the United Nations system. The membership of the Forum is comprised of an equal number of indigenous and governmental experts. It also has a broad mandate that

encompasses virtually every aspect of the work of the United Nations system and as far as indigenous peoples are concerned, may be in a position to offer a coordinated, integrated and holistic approach. This means that the Forum may provide an opportunity not only for mainstreaming indigenous peoples' issues more effectively into the Organization's operational work but also for encouraging cross-sectoral programmes so that health, education, development, environment, human rights, children and other aspects are incorporated into a coherent, culturally appropriate activity.

17. The Forum will adopt the procedures for observer participation used by the Working Group on Indigenous Populations of the Subcommission on the Promotion and Protection of Human Rights. Representatives of indigenous peoples, nations, organizations and communities will therefore be able to take part in its proceedings. This will make this new Charter-based body one of the most open forums in the United Nations system and fulfil, as far as indigenous participation is concerned, one of the recommendations of the United Nations Millennium Declaration: to give greater opportunities to civil society to contribute to the realization of the Organization's goals and programmes. The participation of observers representing indigenous peoples, organizations and communities, as well as from Governments, the United Nations system and non-governmental organizations, will create a diverse and dynamic assembly combining direct experience and technical expertise. While it is certain that the selection of members of the Permanent Forum is presently a focus of interest for Governments and indigenous peoples, the observers and their contribution, based upon their own knowledge, governmental, institutional or community responsibilities, and life experience, are what will determine the eventual strength and impact of the Forum.

18. The Secretary-General of the United Nations has designated my Office as the lead agency for the implementation of Council resolution 2000/22 and approved the proposal to hold inter-departmental and inter-agency consultations on the practical and policy issues arising from the Forum. In this regard, my Office sent a letter to indigenous organizations and to Governments on 26 February 2001 inviting indigenous organizations to hold consultations and nominate indigenous candidates for the Permanent Forum. In considering possible candidates, indigenous organizations were encouraged to take into account equitable geographic distribution and gender balance. Following consultations with the secretariat of the Economic and Social Council, the deadline for nominations was put at 1 October 2001.

19. My Office has also undertaken consultations both by letter and through meetings with other United Nations departments, organizations and agencies. In line with the recommendation of the Secretary-General, the consultations have focused on how the elements of the United Nations system can work together to ensure the success of the Forum. I also raised the issue of the Forum with the Administrative Committee on Coordination and the Inter-Agency Standing Committee. The response from within the United Nations system has been positive. Ten United Nations organizations have provided information about their activities, appointed focal points for the Forum, and expressed their willingness to cooperate in an inter-agency approach.

20. I have given consideration to the establishment of a secretariat for the Forum that can draw upon the experience, knowledge and support of key United Nations partners. Consultations have been held among the United Nations organizations with a view to establishing an appropriate secretariat that can service the Forum, taking into account its specificity. In consultations held so far, the establishment of inter-agency technical support for the preparatory phase of the Forum has been welcomed by the United Nations partners. Whether the secretariat to service the Forum is finally to be based in New York or Geneva, it is clear that ongoing liaison would need to be maintained between both cities. It should be stressed that the locating of the secretariat in one of the United Nations Offices does not diminish the importance of the work that needs to be done in both places to ensure a fully integrated and cooperative approach to support the work of the Forum.

21. A number of issues are the subject of consultation among the interested parties. These include the date and location of the first session of the Permanent Forum. A number of States and indigenous organizations have expressed the view that the Forum should meet prior to the Council's substantive session of 2002 and with sufficient time for its report to be prepared and translated. Different positions have been advanced regarding the location of the first session and

note may be taken of the importance of Geneva and New York for indigenous peoples since both cities are home to departments, programmes and specialized agencies whose work has a direct bearing on their communities.

22. Apart from these outstanding practical matters, there are also a number of substantive considerations. The Forum will determine its own agenda and programme when it meets. However, United Nations organizations are presently reviewing how they might contribute towards the preparations for the Forum. I have invited the United Nations partners to provide information about their activities so that this can be made available to the Forum at its first meeting. One observation that may be made on the basis of the information provided so far by United Nations organizations is the absence of global statistical data relating to indigenous peoples. It is also proposed that the United Nations system prepare a consolidated paper identifying options and approaches for the Forum's interaction with pertinent United Nations organizations and agencies.

23. The Permanent Forum represents a major initiative for the entire United Nations system. It has an unusual holistic role, namely to reconcile and harmonize the range of issues dealt with by the United Nations, including human rights, development, the environment, cultural and social issues, education and others, and try to bring benefits to indigenous communities. It is a challenge for all partners — Governments, the United Nations system, non-governmental organizations and indigenous peoples — and will require new working practices and innovative approaches. The impact of the Forum may also be felt more widely in the international community since many of the issues that will be discussed will touch more generally on practical solutions for better managing the environment, strengthening community development, or developing institutions and practices that respect cultural diversity.

24. Notwithstanding the important institutional development that the Forum represents, it is still a source of grave concern that indigenous peoples do not enjoy any universal human rights standards for the protection of their collective and individual rights. The efforts made by Governments and indigenous peoples in the open-ended inter-sessional working group on the draft United Nations declaration on the rights of indigenous peoples have not translated into significant progress in the adoption of various provisions in the draft. Concern was expressed at the fifty-seventh session of the Commission on Human Rights that the draft declaration would not be ready for adoption by the General Assembly before the end of the International Decade of the World's Indigenous People in 2004, as recommended. I stress the urgency of standard-setting for indigenous peoples and reiterate the availability of my Office to contribute in any way that might accelerate the process.

25. The decision by the Commission on Human Rights, in resolution 2001/57 of 24 April 2001, to appoint a Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people is a welcome additional mechanism that addresses indigenous concerns. The Special Rapporteur will gather, request and exchange information on violations of human rights and formulate recommendations and proposals on appropriate measures to prevent and remedy violations. The Special Rapporteur is also able to undertake visits to countries at the invitation of Governments. In the absence of a United Nations instrument to protect indigenous peoples' rights, the Special Rapporteur will have a significant role to play in assisting Governments as they seek to develop protection of the human rights of their indigenous peoples and may be able to draw upon the emerging jurisprudence of the treaty bodies, as well as the Indigenous and Tribal Peoples Convention, 1989 of the International Labour Organization. My Office stands ready to assist the new Special Rapporteur in his or her important task.

IV. The rights of persons living with HIV/AIDS

26. HIV/AIDS continues to have a devastating impact around the world, including increased mortality and morbidity among working-age adults, diminished food production, as well as increasing numbers of orphaned children. By the end of 2000 there were 21.8 million AIDS-related deaths, including 4.3 million children and 9 million women. Over 36 million people are currently infected with the HIV virus, with 5.3 million new infections reported last year alone.[1]

27. As a result of HIV/AIDS, the international community now faces a global problem that affects social and economic development, human security and

human rights. The Secretary-General has referred to the pandemic as a "health crisis that threatens to reverse a generation of accomplishments in human development, and which is rapidly becoming a social crisis on a global scale" (A/54/2000, para. 118). The issue is now on the agenda of the Security Council, which discussed AIDS under its agenda item on the situation in Africa in January 2000. This is the first time the Council has ever considered a health issue in the context of peace and security. With the adoption of resolution 1308 (2000) in July 2000 and resolution 1325 (2000) in October 2000, the Council has recognized the importance of incorporating HIV/AIDS prevention and awareness skills in the training of peacekeeping personnel.

28. The special session of the General Assembly on HIV/AIDS, which will be held from 25 to 27 June 2001, presents an opportunity for the international community to renew its commitment to combating the pandemic through prevention, improved access to care and treatment, care of children orphaned by AIDS and expanded public/private-sector partnerships, and to address the need for an accelerated multisectoral response to the epidemic and for resources commensurate with the crisis. This commitment should be based on international human rights principles as a cross-cutting theme, including strengthening respect for the rights of people infected with, affected by or vulnerable to HIV infection, as well as of the individuals and communities responding to the epidemic; enhancing States' responsibility; monitoring violations of human rights in the context of HIV/AIDS; and strengthening redress mechanisms.

29. Human rights violations are linked inextricably to virtually every aspect of the HIV/AIDS epidemic, from the factors that cause or increase vulnerability to HIV infection, to discrimination based on stigma attached to people living with HIV/AIDS, to the factors that limit the ability of individuals and communities to respond effectively to the epidemic. Conversely, when human rights are respected vulnerability to HIV/AIDS is reduced, HIV/AIDS-related stigma and discrimination is prevented, and the personal and societal impact of the disease is alleviated. An effective international response to the HIV/AIDS pandemic therefore requires the adoption of a rights-based approach through the implementation of the full range of civil, cultural, economic, political and social rights, as well as the right to development. This includes addressing the root causes of vulnerability to HIV infection, such as poverty, gender-based discrimination and trafficking in human persons, as a vital step towards prevention.

30. The heads of State and Government at the Millennium Summit resolved, in the Millennium Declaration, to seek to halt and begin to reverse the spread of HIV/AIDS, to provide special assistance to children orphaned by HIV/AIDS and to assist Africa to build up its capacity to tackle the spread of the pandemic. Meeting this daunting challenge will require the international community to mobilize every means at its disposal. The United Nations human rights instruments and mechanisms provide a principled framework and the necessary tools for addressing the full range of social, political, and economic factors that drive the pandemic. My Office, in collaboration with the United Nations Joint Programme on HIV/AIDS (UNAIDS), continues to support the promotion of a rights-based approach through the elaboration and promotion of a normative framework relevant to HIV/AIDS, support for the work of the United Nations human rights mechanisms, and empowerment of States, civil society and individuals to respond effectively to the pandemic, in accordance with existing international human rights standards.

31. The Durban Conference offers a unique opportunity to address the relationship between HIV/AIDS and various forms of discrimination and intolerance at the global, regional and local levels. The overwhelming majority of people living with HIV/AIDS live in the developing world, and most of them belong to marginalized groups. In developed countries, most people living with HIV/AIDS are also members of marginalized groups. The link between HIV infection and racism and racial discrimination in areas such as education, access to medical care and health services, and employment needs to be considered in greater depth.

International guidelines on HIV/AIDS and human rights

32. My Office and UNAIDS hosted the Second International Consultation on HIV/AIDS and Human Rights in Geneva in September 1996, in response to Commission on Human Rights resolution 1996/42 in which the Commission recognized the need to elaborate on the application of existing human rights principles in the context of HIV/AIDS. The

Consultation acted on this need and resulted in the elaboration and adoption of the International Guidelines on HIV/AIDS and Human Rights (E/CN.4/1997/37, annex I).

33. The Guidelines are based in the recognition of the need to promote and protect human rights in order to reduce vulnerability to HIV infection, to lessen the adverse impact of HIV/AIDS on those affected, and to empower individuals and communities to respond effectively to the pandemic. They synthesize human rights norms applicable to HIV/AIDS and incorporate these into concrete measures to protect human rights and health where HIV/AIDS is concerned and offer assistance, not just for people living with HIV, but for society in general. At the same time, the Guidelines reflect the recognition that States bring to the epidemic "different economic, social and cultural values, traditions and practices — a diversity which should be celebrated as a rich resource for an effective response to HIV/AIDS" (ibid.).

34. The Guidelines are targeted primarily at States, and addressed in particular to policy makers, legislators and the judiciary, civil society, professional associations, the media and the private sector. The measures proposed in the Guidelines follow three broad approaches:

(a) Increasing awareness of the human rights principles underlying a positive and sustainable response to HIV/AIDS;

(b) Providing action-oriented measures to be employed by Governments in the areas of law, administrative policy and practice that will protect human rights and achieve HIV-related public health goals;

(c) Increasing private sector and community participation in the response to HIV/AIDS, including building capacity and responsibility of civil society to respond ethically and effectively.

35. The Guidelines are intended as a tool for States in designing, coordinating and implementing their national HIV/AIDS policies and strategies and, as such, they aim to help close the gap between human rights principles and their implementation on the ground. The Guidelines were published jointly by my Office and UNAIDS in February 1998[2] and have since been used by Governments, human rights institutions, United Nations agencies and bodies, non-governmental organizations, and people living with HIV/AIDS as an important tool for HIV/AIDS and human rights training, policy formulation, developing HIV/AIDS-related legislation and advocacy.

Recent action to advance the rights of persons living with HIV/AIDS

36. The Commission on Human Rights has been active in the promotion and protection of HIV/AIDS-related human rights for many years. The Commission has, since 1990, adopted a number of resolutions emphasizing the need to address the vulnerability of certain groups to HIV infection and to combat discrimination against people living with HIV/AIDS.[3] In its latest resolution, resolution 2001/51 on the protection of human rights in the context of HIV/AIDS, the Commission stressed that the term "or other status" in non-discrimination provisions in international human rights instruments should be interpreted to cover health status, including (actual or presumed) HIV/AIDS status. It has urged Governments, civil society and other United Nations bodies to implement the International Guidelines on HIV/AIDS and Human Rights and has requested that States review their legislation, practices and policies regularly to ensure they conform with international human rights standards and norms.

37. The Commission at its fifty-seventh session sent a clear message regarding the importance of promoting and protecting human rights in the context of HIV/AIDS. In resolution 2001/57, the Commission expressed concern over the increasingly devastating scale of the pandemic; the continuing human rights abuses in the context of HIV/AIDS; the lack of full enjoyment of human rights by persons infected, presumed to be infected and affected by HIV/AIDS; and the discrimination that persists in law, policy and practice. It requested States, United Nations organs, programmes and specialized agencies, international and non-governmental organizations and national human rights institutions to take all necessary measures for the protection of HIV/AIDS-related human rights, including by ensuring that their laws, policies and practices respect human rights in the context of HIV/AIDS. It also requested States, United Nations organs, programmes and specialized agencies, and international and non-governmental organizations to assist developing countries, and in particular least

developed countries and those in Africa, in their efforts to prevent the spread of the epidemic and to alleviate and control the impact of HIV/AIDS on the human rights of their populations and care for those affected.

38. Under its agenda item on economic, social and cultural rights, the Commission also adopted, for the first time, a resolution on access to medication in the context of pandemics such as HIV/AIDS. In resolution 2001/33, the Commission recognized that access to medication in the context of pandemics such as HIV/AIDS is an element fundamental to achieving the full realization of the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. The Commission called upon States to pursue policies which would promote the availability in sufficient quantities, accessibility to all without discrimination and the scientific appropriateness and quality of pharmaceuticals or medical technologies used to treat pandemics such as HIV/AIDS. It encouraged States to adopt measures to safeguard access to preventive, curative or palliative pharmaceuticals or medical technologies from any limitations by third parties.

39. In resolution 2001/51 the Commission also requested special representatives, thematic and country rapporteurs, and working groups to integrate the protection and promotion of HIV-related human rights within their mandates. Mandates that are of particular relevance to HIV/AIDS include those relating to the sale of children, child prostitution and child pornography, the right to education, the promotion and protection of the right to freedom of opinion and expression, foreign debt and structural adjustment programmes, violence against women and internally displaced persons.

40. At its twenty-second session in April/May 2000, the Committee on Economic, Social and Cultural Rights adopted general comment No. 14 on the right to the highest attainable standard of health (E/C.12/2000/4). The general comment contains important guidance on the normative content of the right to health, including in the context of HIV/AIDS; States parties' obligations in relation to the right to health, including the provision of a health insurance system which is affordable to all, the promotion of medical research and health education, and information campaigns with respect to HIV/AIDS and sexual and reproductive health in particular; violations of the obligation to respect, protect and fulfil the right to health; implementation of the right to health at the national level; and the obligations of actors other than States parties, including United Nations programmes and agencies. The general comment provides valuable guidance to States in their efforts to implement their international obligations.

41. The Committee on the Rights of the Child has increasingly integrated the issue of HIV/AIDS into its work, both with regard to reporting by States parties and the dialogue between States parties and members of the Committee. The Committee, in collaboration with UNAIDS, WHO and UNICEF, organized a theme day on 5 October 1998 on children living in a world with AIDS[4] with a view to identifying and understanding the rights of children living in a world with HIV/AIDS and evaluating their status at national level; promoting the general principles of the Convention on the Rights of the Child in the context of HIV/AIDS, including non-discrimination and participation; identifying best practices in the implementation of rights related to the prevention of HIV/AIDS infection and the care for, and protection of, children infected or affected by the epidemic; contributing to the formulation and promotion of child-oriented policies, strategies and programmes to prevent and combat HIV/AIDS; and promoting the adoption at the national level of approaches inspired by the International Guidelines on HIV/AIDS and Human Rights. The day of general discussion concluded with the adoption by the Committee of 16 recommendations. They have provided useful guidance to Governments, non-governmental organizations and the United Nations system for the promotion and protection of HIV/AIDS-related child rights. The Committee refers routinely to these recommendations in its examination of States parties' reports on their implementation of the Convention on the Rights of the Child.

42. The Committee on the Elimination of Discrimination against Women was the first human rights treaty body to incorporate HIV/AIDS formally into its work. In its general recommendation No. 15, on the avoidance of discrimination against women in national strategies for the prevention and control of AIDS, adopted in 1990,[5] the Committee highlighted the link between women's reproductive role, their subordinate social position, and their increased vulnerability to HIV infection. The Committee recommended that States parties intensify efforts in disseminating information to increase public

awareness, ensure the active participation of women in primary health care, and take measures to enhance their role as care providers, health workers and educators in the prevention of infection with HIV. It further recommended that programmes to combat AIDS devote special attention to the rights and needs of women and children, and that all States parties include information on the effects of AIDS on the situation of women in their reports under article 12 of the Convention on the Elimination of All Forms of Discrimination against Women on the right to health.

43. The Committee subsequently reiterated the centrality of issues of HIV/AIDS to the rights of women and adolescent girls to sexual health in its general recommendation 24 on women and health (A/54/38/Rev.1, chap. I). The Committee urged that special attention be given to the health needs and rights of women belonging to vulnerable and disadvantaged groups, such as migrant women, refugee and internally displaced women, the girl child and older women, women in prostitution, indigenous women and women with physical or mental disabilities. With regard to HIV/AIDS and other sexually transmitted diseases, the Committee drew attention to the lack of adequate access to information and services necessary to ensure sexual health, the impact of harmful traditional practices on the risk of HIV/AIDS infection for girls and women, and other factors which compound the vulnerability of women and girls to HIV/AIDS. In this regard, it urged States to ensure, without prejudice or discrimination, the right to sexual health information, education and services for all women and girls, including those who have been trafficked, even if they are not legally resident in the country. In particular, States parties should ensure the rights of female and male adolescents to sexual and reproductive health education by properly trained personnel in specially designed programmes that respect their right to privacy and confidentiality.

44. The Human Rights Committee has addressed the issue of the right to privacy in the context of HIV/AIDS, noting that article 17 of the International Covenant on Civil and Political Rights is violated by laws which criminalize private homosexual acts between consenting adults. Specifically, the Committee has found that the "criminalization of homosexual practices cannot be considered a reasonable means or proportionate measure to achieve the aim of preventing the spread of HIV/AIDS ... by driving underground many of the people at risk of infection ... [it] would appear to run counter to the implementation of effective education programmes in respect of the HIV/AIDS prevention".[6] Importantly, the Committee has held in the same case that the term "sex" in article 26 of the Covenant, which prohibits discrimination on various grounds, may include sexual orientation.[7] In its general comment No. 18,[8] the Committee has also confirmed that article 26 prohibits discrimination in law or in fact "in any field regulated and protected by public authorities". This prohibition requires States to review and, if necessary, repeal or amend their laws, policies and practices to proscribe differential treatment which is based on arbitrary HIV-related criteria.

Cooperation with national institutions for the promotion and protection of human rights

45. Effective implementation of international human rights standards occurs at the national level, where independent, effective, pluralist and accessible national institutions exist. These institutions are vital, therefore, to the promotion and protection of HIV-related human rights, including through investigating and responding to HIV/AIDS-related human rights violations, human rights education in the context of HIV/AIDS, and supporting and advising Governments in the integration of human rights principles in national policies and legislation related to HIV/AIDS.

46. The Lomé Declaration, adopted at the third Conference of African National Institutions for the Promotion and Protection of Human Rights (14-16 March 2001), offers a good example of efforts under way to mainstream HIV/AIDS into the mandates and work of national human rights institutions. The Declaration commits national institutions to intensifying efforts to ensure universal respect for and observance of human rights and fundamental freedoms for all; reducing vulnerability to HIV/AIDS and preventing HIV/AIDS-related stigma and discrimination; ensuring that national laws, policies and practices respect human rights in the context of HIV/AIDS and promote effective care and programmes; and maintaining HIV/AIDS and human rights as a standing item on the agenda of future meetings of African national institutions.

47. My Office, in collaboration with UNAIDS, continues to work with national institutions in the promotion and protection of HIV/AIDS-related human rights, including through the facilitation of training on human rights and HIV/AIDS for national human rights institutions. At the annual meeting of the International Coordinating Committee of National Human Rights Institutions in April 2001, I urged national institutions to adopt and promote the International Guidelines on HIV/AIDS and Human Rights and offered the assistance of my Office.

V. The rights of persons with disabilities

48. Persons with functional limitations or disabilities are particularly vulnerable to exclusion and marginalization. Because of their physical or mental limitations, persons with disabilities are frequently more at risk of having their rights violated and denied. Moreover, disability itself is often the result of human rights abuses and violence. The 1993 Standard Rules on the Equalization of Opportunities for Persons with Disabilities, adopted by the General Assembly by its resolution 48/96 of 20 December 1999, specifies that the term "disability" "summarizes a great number of different functional limitations occurring in any population. ... People may be disabled by physical, intellectual or sensory impairment, medical conditions or mental illness. Such impairments, conditions or illness may be permanent or transitory in nature" (para. 17).

49. According to the United Nations, at least 600 million persons, constituting about 10 per cent of the world's total population, suffer from some type of disability, some 80 per cent of whom live in developing countries. In the majority of countries, at least 1 out of 10 persons has a physical, mental or sensory impairment, and at least 25 per cent of the entire population are adversely affected by the presence of disabilities.[9]

50. In recognition of the need for an international effort to address the problems faced by persons with disabilities, the General Assembly proclaimed the year 1981 as the International Year of Disabled Persons under the theme "full participation and equality". It established a United Nations Trust Fund to finance these activities and to draw the attention of the international community to the situation and the needs of persons with disabilities. The main result was the elaboration and adoption in 1982 of the World Programme of Action concerning Disabled Persons (A/37/351/Add.1 and Add.1/Corr.1, annex, sect. VIII). The Programme of Action set the guidelines for a world strategy to promote the adoption of effective measures for the achievement of "equality" and "full participation" of persons with disabilities in social life and development. It includes a section on human rights and disability with, inter alia the following recommendations:

> "... organizations and bodies involved in the United Nations system responsible for the preparation and administration of international agreements, covenants and other instruments that might have a direct or indirect impact on disabled people should ensure that such instruments fully take into account the situation of persons who are disabled" (para. 164).
>
> "Particular conditions may exist which inhibit the ability of disabled persons to exercise the human rights and freedoms recognized as universal to all mankind. Consideration should be given by the United Nations Commission on Human Rights, to such conditions" (para. 166).
>
> "Incidents of gross violation of basic human rights, including torture, can be a cause of mental and physical disability. The Commission on Human Rights should give consideration, inter alia, to such violations for the purpose of taking appropriate ameliorative action" (para. 168).

51. In 1982, the Assembly proclaimed the period 1983-1992 as the United Nations Decade of Disabled Persons and encouraged Member States to use this period as one of the means to implement the Programme of Action.

Human rights norms and persons with disabilities

52. The principle of non-discrimination is a core and fundamental human rights norm. The Universal Declaration of Human Rights and the six major human rights treaties embody this principle. The provisions related to this principle in the two International Covenants, for instance, refer to the prohibition of discrimination on the basis "of any kind" of distinction.

This includes discrimination relating to disability. Discriminatory or unequal treatment affecting people with disabilities which is based on other factors, such as race or sex, is also subject to the non-discrimination provisions.

53. Specifically, article 2 of the International Covenant on Civil and Political Rights recognizes that everyone whose rights or freedoms are violated shall have an effective remedy. This provision is particularly important in the context of violation of rights of persons with disabilities, as Governments do not systematically recognize the legal protection of the rights of persons with disabilities nor do many Governments provide any special measures to assist such persons in taking action against any violations of their rights.

54. Persons with mental disabilities are particularly vulnerable to abuse, including through their unwarranted committal to mental institutions. The Covenant provides that no one shall be subjected without his or her free consent to medical or scientific experimentation. It also refers to the right to liberty and security of person (art. 9) and to due process guarantees, including the right to defence and the right to be informed of the reasons for one's arrest (art. 14). These provisions are of considerable importance for the protection of persons with mental disabilities, particularly with regard to their right not to be subjected to arbitrary and unnecessary detention. Other rights contained in the Covenant and which have a particular impact on persons with disabilities include the prohibition of torture (art. 7), the right to privacy (art. 17), and the right to marry and to found a family (art. 23). Mentally disabled persons have often been deprived of these rights, especially in cases of forced sterilization.

55. Many provisions of the International Covenant on Economic, Social and Cultural Rights have a specific impact on the rights of persons with disabilities. Article 12, for instance, recognizes the right of everyone to the enjoyment of the highest attainable standards of physical and mental health. This right is violated when States fail to take the necessary measures to prevent malnutrition, when proper medical care is not provided, when persons with disabilities are denied rehabilitation services, when immunization campaigns to prevent certain diseases that cause entirely avoidable disabilities are not initiated. Article 13 recognizes the right of everyone to education. In the case of persons with disabilities, this would mean that they should have effective access to school education, and that special education should be provided for them where necessary.

56. The Convention on the Rights of the Child is the first international human rights treaty which fully recognizes the rights of children with disabilities. Article 23, which relates to the rights of mentally or physically disabled children, is based on the principle that children with disabilities should enjoy a full and decent life in conditions which promote dignity, self-reliance, and facilitate participation within society, and they should have real and concrete possibilities to exercise these rights. Also, the general principles embodied in the Convention, as reflected in articles 2, 3, 6 and 12 relating to non-discrimination, the best interest of the child, survival and development, and respect for the views of the child, are of particular relevance. Article 2 specifically refers to disability in the context of outlining the grounds of non-discrimination.

57. Equally relevant treaties include the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Elimination of All Forms of Discrimination against Women. These Conventions provide a wide range of obligations for the elimination of discrimination and the promotion of equality which go beyond the enactment of anti-discrimination legislation.

Recent action to advance the rights of persons with disabilities

58. During the 1980s, the Subcommission for the Prevention of Discrimination and Protection of Minorities (now the Subcommission on the Promotion and Protection of Human Rights) pioneered the work on the elaboration of the rights of persons with disabilities. In 1984, the Subcommission appointed Leandro Despouy as Special Rapporteur to undertake a thorough study of the causal connection between serious violations of human rights and fundamental freedoms and disability, to focus on the progress made to alleviate difficulties and to submit his views and recommendations. The Special Rapporteur concluded that violations of human rights and humanitarian law are factors which cause disabilities, and that

insufficient care and cruelty, in particular towards children and women, aggravate disabilities among these two groups of the population. He expressed concern that refugees, indigenous people and migrant workers are more vulnerable because when they are disabled they have hardly any access to health-care services and rehabilitation facilities and their vulnerability is magnified if they become disabled because of their status. The Special Rapporteur recommended that, after the end of the Decade, the question of human rights and disability be kept on the agendas of the General Assembly, the Economic and Social Council, the Commission on Human Rights and the Subcommission as an item of continued concern and ongoing attention. The Special Rapporteur recommended that the United Nations Committee on Economic, Social and Cultural Rights should assume the supervisory responsibilities in the disability field.

59. Taking up this challenge, the Committee on Economic, Social and Cultural Rights has adopted two specific general comments on the rights of persons with disabilities. The first is general comment No. 5[10] adopted in 1994 which specifically addresses persons with disabilities. The second is general comment No. 14 on the right to the highest attainable standards of health, referred to in paragraph 40 above. General comment No. 5 defines the rights of persons with disabilities and considers specific means for their implementation. It draws on specific provisions of the Covenant relating particularly to equal rights of men and women; rights relating to work, social security, protection of the family and of mothers and children; the right to an adequate standard of living; the right to physical and mental health; the right to education; and the right to take part in cultural life and enjoy the benefits of scientific progress. General comment No. 14 provides valuable guidance to States on practical measures to ensure that persons with disabilities have access to health-care services, rehabilitation programmes and preventive actions against disabilities such as obligatory and free vaccinations.

60. The Committee on the Rights of the Child has highlighted in its guidelines for States parties' initial and periodic reports its wish to receive information on children with disabilities. As reflected in the concluding observations made following the consideration of initial reports of States parties, the Committee has paid special attention to the issue of children with disabilities. In particular, it has tackled the issue of discrimination against disabled children, pointing out that it limits access by disabled children to basic services. It expressed the need for according them priority with respect to resource allocation. It expressed concern over the lack of measures to implement article 23 of the Convention, recommended efforts to avoid committing disabled children to institutions, and ensuring their access to education. It also stressed the importance of early identification of disability, expressed concern about preventable causes of disability, and recommended that measures be taken to ensure that disabled children are separated from adults suffering mental ill-health.

61. On 6 October 1997, the Committee on the Rights of the Child also held a general discussion on the rights of children with disabilities.[11] It identified three main issues for discussion: (i) the right to life and development; (ii) self-representation and full participation; (iii) the right of children with disabilities to inclusive education. In view of the major impact of armed conflicts, which disable hundreds of thousands of children, it urged States to ratify the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and Their Destruction. The Committee also decided to set up a working group on the rights of children with disabilities, which includes members of the Committee, representatives of relevant United Nations bodies and agencies and non-governmental organizations of disabled people, including disabled children. The working group has met three times since its establishment.

62. As noted above, in 1993 the General Assembly adopted the Standard Rules on the Equalization of Opportunities for Persons with Disabilities. These Rules are significantly more focused and concrete than the 1982 Programme of Action. They directly address the issue of Member States' responsibility and include an independent and active monitoring mechanism in the form of a special rapporteur who reports to the Commission for Social Development. The Special Rapporteur was appointed in 1994. Non-governmental organizations active in the disability field were invited to establish among themselves a panel of experts, to be consulted by the Special Rapporteur.

63. The Special Rapporteur on disability of the Commission for Social Development has been requested to report every two years on his activities to the Commission on Human Rights. In accordance with

that request, the Special Rapporteur presented reports to the Commission on Human Rights in 1996, 1998 and 2000. In 1996 and 1998, the impact of these reports on the Commission and its mechanisms was limited. But in 2000, the Commission adopted its third resolution, 2000/51 in which, inter alia, it invited the High Commissioner for Human Rights, in cooperation with the Special Rapporteur on disability, to examine measures designed to strengthen the protection and monitoring of the human rights of persons with disabilities and to solicit inputs and proposals from interested parties. International norms and standards now have to be translated into concrete action, which could have an impact on the work of the Commission on Human Rights and on the mechanisms it has established.

64. Further to Commission resolution 2000/51, the Special Rapporteur on disability organized a seminar to discuss ways and means to implement the resolution and strengthen the human rights dimension in the disability debate. The objective of the seminar, which took place in Stockholm from 5 to 9 November 2000, was to elaborate guidelines for identifying and reporting on human rights violations and abuse against persons with disabilities.

65. My Office is committed to strengthening its work on disability and reinforcing its internal expertise in this area. It has already reinforced its support for the work of the Special Rapporteur and decided to place increased emphasis on the issue of disability in the following areas: encouraging the United Nations human rights mechanisms, including the special rapporteurs and treaty bodies, to pay greater attention to the rights of persons with disabilities; and encouraging the non-governmental organizations concerned with the question of disabilities to relate to the United Nations human rights mechanisms.

Cooperation with national institutions for the promotion and protection of human rights

66. During the fifty-seventh session of the Commission on Human rights, my Office organized a consultation with Governments, intergovernmental and non-governmental organizations, specialized agencies and United Nations bodies and national institutions, including national human rights commissions, on the issue of human rights and disability. The consultation reaffirmed the human rights dimension of issues related to disability. It strengthened the link between the Special Rapporteur of the Commission for Social Development and my activities as High Commissioner for Human Rights, and the Commission on Human Rights. The consultation allowed non-governmental organizations in the field of disability to affirm their intention to work closely with human rights mechanisms and national human rights institutions and to reaffirm their commitment to give appropriate attention to the issue of human rights of persons with disabilities. The consultation permitted national institutions to share their experiences developing practices to protect and promote the rights of persons with disabilities and provided an opportunity to strengthen cooperation with my Office and related United Nations agencies.

VI. The rights of persons living in least developed countries

67. The Third United Nations Conference on the Least Developed Countries (UNLDC III) was, at the time of writing, in progress in Brussels. It was convened with the following three broad objectives: (a) to assess the results of the Programme of Action for the Least Developed Countries for the 1990s at the country level; (b) to review the implementation of international support measures, particularly in the areas of official development assistance, debt, investment and trade; and (c) to consider the formulation and adoption of appropriate national and international policies and measures for the sustainable development of LDCs and their progressive integration into the world economy. My Office has contributed to the preparatory processes for UNLDC III by highlighting the relevance of human rights and emphasizing the need to mainstream human rights concerns into the issues that are before the Conference, including the question of vulnerability affecting LDCs and their people.

68. The 49 countries belonging to the LDC category represent some of the poorest and weakest segments of the international community, characterized by numerous vulnerabilities in terms of limited productive capacity and access to services and resources, an acute vulnerability to external economic shocks, as well as vulnerability to natural and man-made disasters. Ten

years after the adoption of the Programme of Action, development performance remains elusive for a significant number of LDCs, and the level of inequality is rising both within and among these countries.

69. Within the country, LDCs and their development partners must focus their attention on the needs of the poorest and the vulnerable segments of the population. The new draft programme of action for the LDCs for the decade 2001-2010 (A/CONF.191/6) aims at significantly improving the human conditions of more than 600 million people and to end their marginalization by eradicating poverty, inequality and deprivation. Efforts at development of human capacities in LDCs have been affected by low rates of school enrolment and low health, nutrition and sanitation status and by the prevalence of the HIV/AIDS pandemic, particularly in Africa, and malaria, tuberculosis and other communicable diseases, as well as by natural and man-made disasters. While the draft programme of action does not specifically address the issues of indigenous people or persons with disabilities, it calls for actions by LDCs and their partners to promote greater social integration and, where appropriate, strengthening of mechanisms for the participation and protection of all people, including disadvantaged and vulnerable groups and persons.

70. From a human rights perspective, the reduction of the systemic vulnerabilities of the LDCs in an international environment is both a moral imperative and legal obligation of the international community. Article 2 of the International Covenant on Economic, Social and Cultural Rights obliges States to undertake steps, individually and through international assistance and cooperation, to the maximum of available resources, with a view to achieving progressively the full realization of the rights by all appropriate means. The Declaration on the Right to Development obliges individual States to formulate appropriate national policies and to ensure equal and adequate access to essential resources. Furthermore, the Declaration stipulates that it is the duty of States to take steps, individually and collectively, to formulate international development policies with a view to facilitating the full realization of the right. It also provides that States should realize their rights and fulfil their duties in such a manner as to promote an international economic order based on sovereign equality, interdependence, mutual interest and cooperation among all States.

71. In implementing the new programme of action at the country level, LDCs and their development partners must ensure that the rights of the people, and particularly the poor and vulnerable groups in LDCs, are protected and fully mainstreamed into the development policies and programme. It is not, however, only economic, social and cultural rights that need to be protected. The achievement of human development in LDCs requires that individuals enjoy the full extent of their human rights, personal freedoms, opportunities and choices. This in turn requires a supportive national environment based on the rule of law and good governance, as well as the laws, policies, institutions, infrastructure and services to support the full integration of the vulnerable groups in the development processes. A human rights approach to development can serve both as a necessary tool and a foundation for the empowerment of individuals to realize their full potential.

72. To this end, my Office will further intensify its support to LDCs and their development partners in their efforts to achieve the objectives set out in the Programme of Action adopted at UNLDC III and, more broadly, the development goals agreed at the Millennium Summit, through several means within the limit of its available resources. I place high priority on supporting the work of the human rights treaty bodies and in encouraging LDCs to ratify international human rights instruments. Furthermore, I will continue to pursue mainstreaming of human rights in the work of the United Nations agencies which are active in LDCs, particularly through the United Nations Development Assistance Framework/Common Country Assessment process.

Notes

[1] AIDS epidemic update: December 2000 (UNAIDS/WHO, 2000).

[2] *HIV/AIDS and Human Rights: International Guidelines* (United Nations publication, Sales No. E.98.XIV.1).

[3] Resolutions 1995/44 of 3 March 1995, 1996/43 of 19 April 1996, 1997/33 of 11 April 1997 and 1999/49 of 21 April 1999.

[4] *Official Records of the General Assembly, Fifty-fifth Session, Supplement No. 41* (A/55/41), paras. 1507-1536.

[5] *Official Records of the General Assembly, Forty-fifth Session, Supplement No. 38* (A/45/38), chap. IV.

[6] Communication No. 488/1992, *Nicholas Toonan v. Australia* (views adopted on 31 March 1994, fiftieth session), *Official Records of the General Assembly, Forty-ninth Session, Supplement No. 40* (A/49/40), vol. II, annex IX, sect. EE, para. 8.5.

[7] Ibid., para. 8.7.

[8] *Official Records of the General Assembly, Forty-fifth Session, Supplement No. 40* (A/45/40), vol. I, annex VI, sect. A.

[9] *Human Rights and Disabled Persons* by Leandro Despouy, Special Rapporteur, *Human Rights Study Series* No. 6 (United Nations publication, Sales No. E.92.XIV.4).

[10] *Official Records of the Economic and Social Council, 1995, Supplement No. 3* (E/1995/22-E/C.12/1994/20, annex IV).

[11] *Official Records of the General Assembly, Fifty-third Session, Supplement No. 41* (A/53/41), paras. 1399-1428.